

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CARL A. BROOKS,

Plaintiff,

v.

INDETERMINATE SENTENCING  
REVIEW BOARD et al.,

Defendants.

CASE NO. C12-5583 RJB-JRC

ORDER TO FILE AN AMENDED  
COMPLAINT

The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States Magistrate Judge, J. Richard Creatura. The authority for the referral is 28 U.S.C. § 636(b) (1) (A) and (B), and local Magistrate Judge Rules MJR3 and MJR4.

Plaintiff is alleging that his parole hearings over a number of years have been a pretense and that the state entities he names as defendants intend to keep him incarcerated until he dies. Plaintiff names as defendants three state entities -- the Indeterminate Sentence Review Board, the Department of Corrections, and the Attorney General's Office. He does not name a person as a defendant.

1 The civil rights act allows for suit against a person who acts under color of state law and  
 2 deprives another of a constitutional right. Parratt v. Taylor, 451 U.S. 527, 535 (1981) (overruled  
 3 in part on other grounds); Daniels v. Williams, 474 U.S. 327, 330-31 (1986). Neither states nor  
 4 state officials acting in their official capacities are “persons” for purposes of 42 U.S.C. § 1983.  
 5 Will v. Michigan Dept. of State Police, 491 U.S. 58, 71 (1989). Section 1983 claims against  
 6 states, therefore, are legally frivolous. See Jackson v. Arizona, 885 F.2d 639, 641 (9th Cir. 1989).  
 7 This rule applies equally to state agencies. See Kaimowitz v. Board of Trustees of the Univ. of  
 8 Ill., 951 F.2d 765, 767 (7th Cir. 1991); Johnson v. Rodriguez, 943 F.2d 104, 108 (1st Cir. 1991).  
 9 A governmental agency that is an arm of the state is not a “person” for purposes of § 1983. See  
 10 Howlett v. Rose, 496 U.S. 356, 365 (1990); Flint v. Dennison, 488 F.3d 816, 824-25 (9th Cir.  
 11 2007).

12 Further, plaintiff may not challenge the length or duration of his confinement in a civil  
 13 rights action. If a petitioner is challenging the very fact or duration of physical imprisonment,  
 14 and the relief sought will determine whether petitioner is or was entitled to immediate release or  
 15 a speedier release from that imprisonment, petitioner’s sole federal remedy is a writ of habeas  
 16 corpus. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973).

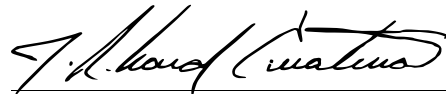
17 The United States Supreme Court held that “[e]ven a prisoner who has fully exhausted  
 18 available state remedies has no cause of action under § 1983 unless and until the conviction or  
 19 sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas  
 20 corpus.” Heck v. Humphrey, 512 U.S. 477, 487 (1994). The Court added:

21 Under our analysis the statute of limitations poses no difficulty while the state  
 22 challenges are being pursued, since the § 1983 claim has not yet arisen. . . . [A]  
 23 § 1983 cause of action for damages attributable to an unconstitutional conviction  
 24 or sentence does not accrue until the conviction or sentence has been invalidated.

1 Id. at 489. “[T]he determination whether a challenge is properly brought under § 1983 must be  
2 made based upon whether ‘the nature of the challenge to the procedures [is] such as necessarily  
3 to imply the invalidity of the judgment.’ Id. If the court concludes that the challenge would  
4 necessarily imply the invalidity of the judgment or continuing confinement, then the challenge  
5 must be brought as a petition for a writ of habeas corpus, not under § 1983.” Butterfield v. Bail,  
6 120 F.3d 1023, 1024 (9th Cir. 1997) (*quoting* Edwards v. Balisok, 520 U.S. 641 (1997)).

7 The Court orders plaintiff to file an amended complaint curing these defects if possible.  
8 The amended complaint will be titled “First Amended Complaint.” Plaintiff must file this  
9 document on or before August 10, 2012. Failure to file a first amended complaint or the filing of  
10 a document that fails to cure the defects listed in this order will result in a Report and  
11 Recommendation that this action be dismissed for failure to state a claim with the dismissal  
12 counting as a third strike pursuant to 28 U.S.C. § 1915 (e) and (g).

13 Dated this 6th day of July, 2012.

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15 J. Richard Creatura  
16 United States Magistrate Judge  
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